

# Joint Statement Opposing SB 287

EXHIBIT 7  
DATE 3-26-09  
SB 287

♦ Montana Academy of Ophthalmology ♦ Montana Athletic Trainers Association ♦ Montana Association of Acupuncture and Oriental Medicine ♦ Montana Chapter of the National Association of Social Workers ♦ Montana Chiropractic Association ♦ Montana Dental Association ♦ Montana Dental Hygienists' Association ♦ Montana Dietetic Association ♦ Montana Hospital Association ♦ Montana Medical Association ♦ Montana Nurses Association ♦ Montana Optometric Association ♦ Montana Pharmacy Association ♦ Montana Physical Therapy Association ♦ Montana Podiatric Medical Association ♦ Montana Psychiatric Association ♦ Montana Psychological Association ♦ Montana Society of Otolaryngology ♦ American Massage Therapy Association MT ♦ American Society for Clinical Laboratory Science ♦ Great Falls Clinic ♦ Licensed Clinical Professional Counselors Association ♦ Rimrock Foundation ♦ Rocky Mountain Health Network ♦

Dear Legislators:

The organizations listed above oppose SB 287 for the following reasons:

1. **SB 287 ARISES FROM A COSMETOLOGY SCOPE OF PRACTICE ISSUE BUT AFFECTS ALL HEALTH CARE PROVIDERS.** The proponents of SB 287 argue that the licensed practice of cosmetology unfairly restricts massage therapy by claiming the term exfoliation and not allowing massage therapists to use the term. Complete deregulation of Montana's current health care licensing and regulation system, through the passage of SB 287, is not the answer to such narrow issues.
2. **FREEDOM TO ACCESS UNREGULATED HEALTH CARE SERVICES ALREADY EXISTS.** Health care is a vital service that daily touches the lives of Montanans at significant and vulnerable times: birth, illness, and death. SB 287 purports to be "an act exempting providers of certain health care services from regulation in order to allow for consumer freedom and access to the services". If this truly is the purpose of the bill, it is simply unnecessary. Montana consumers already have the freedom to access nearly any health care service they seek, including those thousands of health care services not currently regulated by the state.

We agree that consumers should have the freedom to access health care services, including those health care practices that provide alternatives to traditional medicine or other traditional health care services.

3. **SB 287 DEREGULATES ALL HEALTH CARE SERVICES AND ELIMINATES STATE OVERSIGHT.** SB 287 purports that its purpose is to "allow an individual who is not licensed, certified, or registered" in the state of Montana "to provide certain health care services without threat of sanction by the state if the individual is in compliance with the provisions of" the bill. However, the bill in actuality mandates deregulation of nearly all the health care professions that are currently regulated by the state.

SB 287 not only would deregulate the practice of health care, but it would eliminate any state oversight of those individuals who are not licensed by the state. In fact, the bill prevents the state of Montana from fielding and investigating any complaints regarding unlicensed individuals who have harmed individuals through unlicensed health care practices, unless those complaints fall under the very short list of prohibited practices stated

in the bill. Our state has not seen this sort of health care deregulation since the days of the Old West when "snake oil" salesmen stood on the corner purporting to diagnose and cure all sorts of physical ailments with their "all in one" remedies.

The actual effect of this bill will be only to cause consumer confusion and public harm.

4. **SB 287 WILL CAUSE HARM TO HEALTH OF MONTANA PUBLIC.** The bill dangerously redefines the term "diagnosis" in order to permit an unlicensed individual to tell a client that "symptoms" the client is having "may be indicative or consistent with a specific medical condition" or to tell a client that the "client has a probability of significantly less than 100%" chance "of having a specific medical condition". Thus, SB 287 would change state law to permit an unlicensed individual to tell a client that a lump, which in actuality is an undiagnosed malignant tumor, is likely not cancerous, so long as the unlicensed individual has no reason to know the tumor is malignant. These sorts of determinations made by unlicensed individuals will delay diagnosis and treatment of serious medical conditions and will cause serious harm and death to Montana residents.
5. **SB 287 ELIMINATES COMPETENCY REQUIREMENTS FOR HEALTH CARE PROVIDERS.** If SB 287 were to pass, individuals who would like to provide health care services within Montana's borders will have no incentive either to complete their education and training or to gain licensure through the state unless they want to perform surgery, prescribe or administer x-ray radiation, prescribe or administer a prescription drug or controlled substance or perform a high-velocity, low amplitude thrust to a joint, as these are the only health care practices that would be regulated by the state of Montana were this bill to pass.
6. **PRIMARY ASSUMPTIONS OF SB 287 ARE UNSUPPORTED OPINION.** SB 287 states that this legislature has found that "a significant number of Montanans receive services related to their personal health from individuals who are not licensed, certified, or registered by this state but who have received training specific to the services they provide." What are these services? Who are these unlicensed individuals? This statement is not supported by the facts. The vast majority of health care services that Montanans seek are provided by licensed health care professionals, and consumers are not currently restricted from seeking healthcare services from unlicensed individuals.

The bill claims that "despite the widespread use of these services, individuals who provide the services may be in technical violation of Montana laws governing licensed health care providers. As a result, an individual who is not licensed, certified, or registered under Title 37 could be subject to fines, penalties, and the restriction of the individual's practice." Is there actually widespread use of unregulated health care services that are in technical violation of Montana laws governing health care providers?

If an unlicensed individual is providing services that fall within the realm of professional services currently regulated by the state, shouldn't that individual be required to either apply to gain a license to provide such services or to discontinue providing such services?

The bill also declares that this legislature has found that "unlicensed health care services...pose no significant risk to public health, safety, or welfare." This statement is untrue. Health care services which affect the biology of living breathing human beings pose risk, by definition, to the health, safety or welfare of the Montana public.

7. **SB 287 HAS AN ILLOGICAL IMPACT ON LICENSED HEALTH CARE PROVIDERS.** Ironically, the only individuals who would not be permitted to perform the health care services not restricted by SB 287 would be those individuals who had been previously licensed by the state but had their licenses suspended or revoked. Even then, these individuals would only be restricted from providing health care services in the area in which their license was suspended or revoked.
8. **LICENSEES FUNDING OF DEREGULATION IS PATENTLY UNFAIR.** Passage of SB 287 would require that the health care licensees currently licensed by the state of Montana bear the cost, through their licensing fees, of implementing the deregulation of their licenses for the sole benefit of unlicensed individuals.

We hope that the Montana legislature will oppose this bill and will continue to recognize that:

- public health, safety and welfare are necessarily and always implicated by the practice of health care and the provision of health care services,
- the Montana public already has freedom to access to both licensed and unlicensed health care services, and
- deregulation of all health care professions is not the proper response to a specific dispute between some unlicensed massage therapists and the Board of Barbers and Cosmetologists.

1. Brian Sippy, M.D., PhD, President, **Montana Academy of Ophthalmology**
2. J.C. Weida, President, **Montana Athletic Trainers Association**
3. Tanja Brekke, **Montana Association of Acupuncture and Oriental Medicine**
4. David Segerstrom, President, **Montana Chapter of the National Association of Social Workers**
5. V.J. Maddio, President, **Montana Chiropractic Association**
6. Dr. James Aichlmayr, President, **Montana Dental Association**
7. Gail Staples, President, and Gregory A. Van Horssen, **Montana Dental Hygienists' Association**
8. Minkie Medora, **Montana Dietetic Association**
9. John W. Flink, Vice President, Government Affairs, **Montana Hospital Association**
10. Kirk L. Stoner, MD, President, **Montana Medical Association**
11. Robert Allen, Executive Director, **Montana Nurses Association**
12. Brad A. Kimball, O.D., President, **Montana Optometric Association**
13. Starla Blank, Chair, **Montana Pharmacy Association**
14. Lorena Pettet, **Montana Physical Therapy Association**
15. K. Eric Ploot, DPM, President, **Montana Podiatric Medical Association**
16. Donald Harr, MD, **Montana Psychiatric Association**
17. William Patenaude, PhD, President, **Montana Psychological Association**
18. Peter VonDoersten, M.D., President, **Montana Society of Otolaryngology (Head & Neck Surgery)**
19. Kyle Foreman, President, **American Massage Therapy Association MT**
20. Carrie Biskupiak, CLS, Past President, and Mona Jamison, **American Society for Clinical Laboratory Science**
21. Mona Jamison, **Great Falls Clinic**
22. Tom Ferro, LCPC, President, **Licensed Clinical Professional Counselors Association**
23. Candace Payne, **Rimrock Foundation**
24. Paul Cook, MD, President and CEO, **Rocky Mountain Health Network**